



NATIONAL BLACK PROSECUTORS ASSOCIATION 38th ANNUAL CONFERENCE AND JOB FAIR

“All Rise: Perseverance Through the Pandemic and Prosecuting with Purpose”
August 16, 2021 – August 19, 2021

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The National Black Prosecutors Association Calls on Congress & State Legislators to Supplant the Presumption of Arrest with One of Citation and Release

Introduction

The presumption of arrest is destabilizing our communities in more ways than one. Our county and city jails have become the front door to mass incarceration. According to the Vera Institute, an arrest is made every three seconds and fewer than 5% of arrests involve violent crimes.ⁱ 4.9 million people are arrested, booked, and jailed annually—most of whom suffer from substance use disorder and/or mental illness; lack a high school education, health insurance, or employment; and/or make less than \$10,000 annually.ⁱⁱ We should all agree that incarceration is not the way to deal with these serious problems of public health and economic inequality. For these reasons, the National Black Prosecutors Association (“NBPA”) calls on Congress and state legislators to take action to replace the presumption of arrest with one favoring citation and release, as provided below.

Discussion

Citations, Summonses, Desk Appearance Tickets, and similar administrative mechanisms (hereinafter “**Citations in Lieu of Arrest**”) are orders allowing for automatic release, rather than custodial arrest, on a promise to appear in court or pay a fine. These orders spare those accused of low-level offenses, who pose no risk to public safety, from the consequences and indignity associated with one night in jail when justice does not warrant detention.

Most jurisdictions have some form of a Citation in Lieu of Arrest process; however, these laws often grant officers the discretion to decide whether to make a formal arrest for a citation eligible offense; however, discretion can be exercised inequitably. For perspective, the alleged offense that triggered George Floyd’s police encounter and ended his life was a citation eligible offense under Minnesota Law.

Jurisdictions around the country that have expanded mandatory citation in lieu of arrest policies have successfully diverted people from jails without compromising public safety. In such instances, citation in lieu of arrest—either alone or in tandem with other bail reforms—have been effective in reducing local jail populations.ⁱⁱⁱ For example, Kentucky has maintained some form of citation in lieu of arrest since 2013. The state expanded that program in 2017 to include most misdemeanor offenses. In April 2020, in response to the COVID-19 pandemic, the state further expanded citation in lieu of arrest eligibility to include certain low-level felonies. As a result, the statewide jail population decreased by over one-quarter.^{iv}

Following bail reform legislation in New York State, which included mandatory citations or desk appearance tickets for approximately 80% of all people arrested in the state, the statewide jail population decreased by 30%.^v Similarly, New Jersey’s suite of bail reform measures implemented in 2017 included a mandatory citation in lieu of arrest procedure for the majority of people arrested in the state. Now, citations in lieu of arrest are issued for

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nearly *two out of every three* people charged in the state.^{vi} None of the referenced jurisdictions have seen public safety compromised as a result of these policies. New Jersey has actually seen a decrease in crime across all categories, especially violent crime, which is down by more than 18%.^{vii} Accordingly, NBPA implores Congress and state legislators to supplant officer discretion with a requirement mandating citation.

Such legislation must (i) direct the cited individual to mental health and drug abuse treatment, as well as other necessary community services, and (ii) facilitate the cited individual's appearance in court. Data shows that the most effective way to improve court appearance rates is by issuing court date reminders. Simple reminders have been shown to significantly improve court appearance rates and, in fact, are now mandatory in New York City.^{viii} [Flexible court scheduling](#) and [offering access to voluntary services](#) have similarly been employed by jurisdictions to assist people with being successful pretrial.^{ix} To achieve these goals, NBPA proposes the following draft legislation.

Proposed Legislation

- (a) A peace officer **shall** issue a Citation in lieu of a formal arrest, **unless** the alleged offense involves a:
- i. Misdemeanor or felony charge of domestic violence as defined by state law, that results in physical injury;
 - ii. Misdemeanor or felony stalking, as defined by state law;
 - iii. Misdemeanor or felony violation of a domestic abuse order, stay away order, or restraining order, issued for the protection of a person (not of property);
 - iv. Discharge or threatened discharge of a firearm or ghost gun;
 - v. Felony act of violence involving force or physical injury; **or**
 - vi. Felony drug distribution or trafficking;
 - vii. Person (a) with an open case, outstanding FTA warrant, (b) on post release supervision or community supervision, or (c) who is currently on probation or parole.
- (b) Any citation issued by a peace officer **shall** include:
- i. A specific court date scheduled within three weeks of the encounter resulting in the citation;
 - ii. Information detailing when and where the cited individual is to appear in court; and
 - iii. Information on how to reschedule the court date if it conflicts with family or employment obligations.

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- (c) The arresting officer **shall**:
- i. Collect sufficient information to facilitate text message and/or electronic court reminders;
 - ii. Provide the cited individual with a list of voluntary community-based services to assist with accessing benefits, housing, mental health support, and substance use treatment.

ⁱ Vera Institute, “Unlocking Police Data on Arrests” (Jan. 2019), *located at*: <https://www.vera.org/publications/arrest-trends-every-three-seconds-landing/arrest-trends-every-three-seconds/overview>

ⁱⁱ Prison Policy Initiative, Summation of *Arrest, Release, Repeat*, available at: <https://www.prisonpolicy.org/blog/2019/08/26/arrests-report/>

ⁱⁱⁱ Estimating 11% reduction in Harris County by comparing populations from Q1 2020 and Q2 2020 when low-level felony automatic release policies were implemented <https://charts.hctx.net/jailpop/App/JailPopTrends>; 28% jail population reduction in Kentucky <https://www.courier-journal.com/story/news/2020/03/29/kenutcky-jail-population-trimmed-prevent-coronavirus-spread-among-inmates/2936154001/>; 44% in NYC https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf;

^{iv} Jail population numbers: <https://www.vera.org/covid-19/criminal-justice-city-and-state-spotlights/kentucky>; Supreme Court of Kentucky Order 2017-19, authorizing cite and release for most misdemeanors:

https://kycourts.gov/courts/supreme/Rules_Procedures/201719.pdf; Supreme Court of Kentucky Order 2020-25, expanding Order 2017-19 to release certain low-level felonies in response to COVID: https://kycourts.gov/courts/supreme/Rules_Procedures/202025.pdf

^v The largest population reductions occurred in the last three months leading to the law’s implementation in January 2020 as judges began anticipating and incorporating its provisions: <https://www.vera.org/downloads/publications/the-impact-of-new-york-bail-reform-on-statewide-jail-populations.pdf>

^{vi} <https://njcourts.gov/courts/assets/criminal/cjrannualreport2019.pdf?c=zf0>

^{vii} <https://www.americashealthrankings.org/explore/annual/measure/Crime/state/NJ>

^{viii} New York City Criminal Justice Agency at 9 (Mar. 2021), *available at*: <https://www.nycja.org/assets/downloads/Court-Notification-Report-DRAFT-NN-3-8-final.pdf>

^{ix} Monitoring Pretrial Reform in Harris County at 18-20 (Mar. 3, 2021), *available at*: <https://static.texastribune.org/media/files/f66da81cc40c6bf4bbec22e822314f44/second-odonnell-report.pdf>; Insha Rahman, *Undoing the Bail Myth: Pretrial Reforms to End Mass Incarceration* (2019), *available at* <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2767&context=ulj>.